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FILED

DEC 11 2013

Phil Lombardi, Clerk
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) DEAN M. AULERICH, an individual,

Plaintiff,

v.

(1) BLUECROSS BLUESHIELD OF
OKLAHOMA,

Defendant.

Case No. **13 CV - 788 CVE - FHM**

Removed from:
District Court of Tulsa County,
State of Oklahoma
(Case No. CJ-2013-05124)

NOTICE OF REMOVAL

Defendant Blue Cross Blue Shield of Oklahoma, a Division of Health Care Service Corporation, an Illinois Mutual Legal Reserve Company, ("HCSC") (incorrectly named as "BLUECROSS BLUESHIELD OF OKLAHOMA") removes this action to the United States District Court for the Northern District of Oklahoma pursuant to 28 U.S.C. §§ 1332(a)(1), 1441, and 1446. This action is removable because there is complete diversity of citizenship between Plaintiff and HCSC, and the amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.00. In support of this Notice of Removal, HCSC states as follows:

1. On November 7, 2013, Plaintiff filed a Petition (the "Petition") against HCSC commencing the civil action styled *Dean M. Aulerich v. BlueCross BlueShield of Oklahoma*, Case No. CJ-2013-05124, District Court of Tulsa County, State of Oklahoma (at times hereafter the "State Court Action").

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2. Pursuant to 28 U.S.C. § 1446(a) and Local Rule LCvR 81.2, HCSC has attached and filed with the Clerk of this Court as exhibits to this Notice of Removal true and legible copies of all process, pleadings, orders, and other papers filed with the State Court and/or served on HCSC. A copy of the Docket Sheet from the State Court Action is attached as Exhibit 1. A copy of the Petition is attached as Exhibit 2. In addition, all other documents filed of record in the State Court Action and/or served on HCSC are attached as Exhibit 3.

3. HCSC was first served with the Petition through service on the Oklahoma Insurance Commissioner on November 13, 2013. (*See* Ex. 2; Ex. 3 at ¶ 5.) Plaintiff did not plead his citizenship on the face of the Petition. HCSC was first able to determine that there was complete diversity of citizenship between Plaintiff and Defendant on December 2, 2013, when counsel for HCSC, Erin Dailey, conferred with Plaintiff's counsel, Steven Buckman, who agreed to stipulate that Plaintiff was a citizen of Oklahoma and resident of Tulsa County, Oklahoma, for diversity purposes. (*See* December 2, 2013 Letter from Erin K. Dailey to Steven Buckman, memorializing Plaintiff's agreement to stipulate that he is a citizen of the State of Oklahoma and resident of Tulsa County, Oklahoma for diversity of citizenship purposes, attached as Exhibit 4.) HCSC has thus filed this notice of removal within the 30-day period provided by 28 U.S.C. § 1446(b).

4. As of the time of filing this Notice of Removal, there have been no other filings or proceedings in the State Court except those attached as Exhibits 2 and 3.

AMOUNT IN CONTROVERSY

5. The amount in controversy exceeds \$75,000, as evidenced on the face of the Petition. Plaintiff's lawsuit involves a dispute concerning payment of claims in connection with a health insurance policy and allegations of Defendant's alleged breach of duty of good faith and fair dealing. In the Petition, Plaintiff seeks judgment "for a sum in excess of \$75,000.00 for actual damages, exemplary damages . . ." in addition to costs, pre-and-post-judgment interest and attorney fees. (Ex. 2, Pet. at p. 3; *see also* Ex. 4.)

CITIZENSHIP OF DEFENDANT

6. Defendant Blue Cross Blue Shield of Oklahoma, a Division of Health Care Service Corporation, is and was at the time of the filing of Plaintiff's Petition a citizen of Illinois. HCSC is a mutual legal reserve company that is incorporated under the laws of Illinois with its principal place of business in Chicago, Illinois. Blue Cross and Blue Shield of Oklahoma ("BCBS-OK") is an unincorporated division of HCSC. (Exhibit 5, Declaration of L. Adkins, ¶¶ 3-4¹) "[F]or diversity purposes, [an] unincorporated division's citizenship is [the] same as corporation of which it is a part" *Equifax Services, Inc. v. Hitz*, 905 F.2d 1355, 1358 n.2 (10th Cir. 1990) (citing *Brunswick Corp. v. Jones*, 784 F.2d 271, 275 n. 3 (7th Cir.1986)). *See also Wisconsin Knife Works v. Nat'l Metal Crafters*, 781 F.2d 1280, 1282 (7th Cir. 1986) (finding that "the state of which . . .

¹ This Court may consider evidence offered by Defendant with the removal notice to establish federal jurisdiction. *See, e.g., San Juan Basin Royalty Trust v. Burlington Resources Oil & Gas Co., L.P.*, 588 F. Supp. 2d 1274, 1276 (D.N.M. 2008).

[a division] is a citizen for purposes of determining diversity is the state of which the corporation that owns the division is a citizen”).

CITIZENSHIP OF PLAINTIFF

7. Plaintiff is and was at the time of the filing of Plaintiff’s Petition a citizen of the State of Oklahoma. (*See* Ex. 4, memorializing Plaintiff’s agreement to stipulate that he is a citizen of the State of Oklahoma and resident of Tulsa County, Oklahoma for diversity of citizenship purposes.)

8. Therefore, there is complete diversity of citizenship between Plaintiff and Defendant in accordance with 28 U.S.C. § 1332.

CONCLUSION

9. This is a civil action over which this Court has original subject matter jurisdiction pursuant to the provisions of 28 U.S.C. § 1332. Furthermore, this action is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441 in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

10. Venue is appropriate in this Court as this Court is in the district in which the underlying state court action was pending. 28 U.S.C. § 1441.

11. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly provide Plaintiff with written notice of removal of this action and will file a copy of this Notice of Removal with the Clerk of the Tulsa County District Court.

CONCLUSION

12. Therefore, under the applicable provisions of 28 U.S.C. §§ 1332, 1441 and 1446, HCSC has complied with necessary requirements and is entitled to remove this action.

WHEREFORE, Defendant HCSC hereby removes all claims in the Action from the District Court for Tulsa County, Oklahoma, to the United States District Court for the Northern District of Oklahoma.

Dated this 11th day of December, 2013

Respectfully submitted,



Erin K. Dailey, OBA # 20189

GABLEGOTWALS

1100 ONEOK Plaza

100 West Fifth Street

Tulsa, OK 74103

(918) 595-4800

(918) 595-4990 (fax)

edailey@gablelaw.com

*Attorneys for Defendant Blue Cross
Blue Shield of Oklahoma, a Division of
Health Care Service Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2013, a copy of the above and foregoing document was mailed, postage prepaid to the following counsel of record:

Steven Buckman
Buckman & Gray,
Park Centre, Suite 660
525 South Main Street
Tulsa, Oklahoma
74103-4521
(918) 587-1535 facsimile
Attorneys for Plaintiff



Erin K. Dailey

EXHIBIT 1



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THE OKLAHOMA STATE COURTS NETWORK

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IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

DEAN A AULERICH, Plaintiff, v. BLUECROSS BLUESHIELD OF OKLAHOMA, Defendant.	No. CJ-2013-5124 (Civil relief more than \$10,000: BAD FAITH) Filed: 11/07/2013 Judge: Sellers, Jefferson D.
---	--

Parties

AULERICH, DEAN A , Plaintiff
BLUECROSS BLUESHIELD OF OKLAHOMA , Defendant

Attorneys

Attorney

BUCKMAN, STEVEN VANCE(Bar # 10745)
525 SOUTH MAIN
SUITE 660
TULSA, OK 74103

DAILEY, ERIN K(Bar # 20189)
1100 ONEOAK PLAZA
100 WEST FIFTH STREET
TULSA, OK 74103

PARRISH, HARRY A(Bar # 11463)
FRANDEN, WOODARD, FARRIS, QUILLIN &
GOODNIGHT
WILLIAMS CENTER TOWER II
TWO WEST SECOND ST SUITE 900
TULSA, OK 74103

Represented Parties

AULERICH, DEAN A

BLUECROSS BLUESHIELD OF OKLAHOMA,

AULERICH, DEAN A

Events

Event	Party	Docket	Reporter
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Issues

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

Issue # 1.

Party Name:

Defendant: BLUECROSS BLUESHIELD OF OKLAHOMA

Issue: BAD FAITH (OTHER)
Filed by: AULERICH, DEAN A
Filed Date: 11/07/2013

Disposition Information:

Pending.

EXHIBIT 1

Docket

Date	Code	Count	Party	Serial #	Entry Date		
11-07-2013	TEXT	1		87403254	Nov 7 2013 1:38:29:123PM	-	\$ 0.00
							CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING.
11-07-2013	OTHER	-		87403256	Nov 7 2013 3:46:45:513PM	Realized	\$ 0.00
							BAD FAITH
11-07-2013	DMFE	-		87403257	Nov 7 2013 1:38:29:293PM	Realized	\$ 2.00
							DISPUTE MEDIATION FEE(\$ 2.00)
11-07-2013	PFE1	-		87403258	Nov 7 2013 3:43:11:413PM	Realized	\$ 163.00
							PETITION(\$ 163.00)
							 Document Available (#1023328903)
11-07-2013	PFE7	-		87403259	Nov 7 2013 1:38:29:293PM	Realized	\$ 6.00
							LAW LIBRARY FEE(\$ 6.00)
11-07-2013	OCISR	-		87403260	Nov 7 2013 1:38:29:293PM	Realized	\$ 25.00
							OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)
11-07-2013	CCADMIN02	-		87403261	Nov 7 2013 1:38:29:293PM	Realized	\$ 0.20
							COURT CLERK ADMINISTRATIVE FEE ON \$2 COLLECTIONS(\$ 0.20)
11-07-2013	OCJC	-		87403262	Nov 7 2013 1:38:29:293PM	Realized	\$ 2.00
							OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND(\$ 2.00)
11-07-2013	OCASA	-		87403263	Nov 7 2013 1:38:29:293PM	Realized	\$ 5.00
							OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES(\$ 5.00)
11-07-2013	CCADMIN04	-		87403264	Nov 7 2013 1:38:29:293PM	Realized	\$ 0.50
							COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.50)
11-07-2013	LTF	-		87403265	Nov 7 2013 1:38:29:403PM	Realized	\$ 10.00
							LENGTHY TRIAL FUND(\$ 10.00)
11-07-2013	SMF	-		87403266	Nov 7 2013 1:38:29:463PM	Realized	\$ 5.00
							SUMMONS FEE (CLERKS FEE)(\$ 5.00)
11-07-2013	SMIMA	-		87403267	Nov 7 2013 1:38:29:503PM	Realized	\$ 0.00
							SUMMONS ISSUED - MAILED BY ATTORNEY
11-07-2013	EAA	-	AULERICH, DEAN A	87409968	Nov 8 2013	-	\$ 0.00

9:00:36:007AM

ENTRY OF APPEARANCE (STEVEN BUCKMAN ENTERS AS COUNSEL) / CERTIFICATE OF SERVICE

 [Document Available \(#1023445115\)](#)

11-07-2013 TEXT	-	87403255	Nov 7 2013 1:38:29:173PM	-	\$ 0.00
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OCIS HAS AUTOMATICALLY ASSIGNED JUDGE SELLERS, JEFFERSON D. TO THIS CASE.

11-07-2013 ACCOUNT	-	87403280	Nov 7 2013 1:39:11:023PM	-	\$ 0.00
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RECEIPT # 2013-2719669 ON 11/07/2013.

PAYOR:BUCKMAN & GRAY TOTAL AMOUNT PAID: \$218.70.

LINE ITEMS:

CJ-2013-5124: \$168.00 ON AC01 CLERK FEES.

CJ-2013-5124: \$6.00 ON AC23 LAW LIBRARY FEE.

CJ-2013-5124: \$0.70 ON AC31 COURT CLERK REVOLVING FUND.

CJ-2013-5124: \$5.00 ON AC58 OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES.

CJ-2013-5124: \$2.00 ON AC59 OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND.

CJ-2013-5124: \$2.00 ON AC64 DISPUTE MEDIATION FEES.

CJ-2013-5124: \$25.00 ON AC79 OCIS REVOLVING FUND.

CJ-2013-5124: \$10.00 ON AC81 LENGTHY TRIAL FUND.

12-03-2013 MO	-	BLUECROSS BLUESHIELD OF OKLAHOMA	87658428	Dec 4 2013 11:33:35:770AM	-	\$ 0.00
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UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE ANSWER (ERIN DAILEY ENTERS AS COUNSEL - COVERSHEET ATTACHED) / CERTIFICATE OF SERVICE

 [Document Available \(#1023673671\)](#)

12-04-2013 CTFREE	-		87660901	Dec 4 2013 1:28:24:493PM	-	\$ 0.00
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SELLERS, JEFFERSON D.: ORDER ENTERED GRANTING DEFENDANT UNTIL 12-18-13 TO ANSWER.

12-04-2013 O	-		87668453	Dec 5 2013 9:20:07:287AM	-	\$ 0.00
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ORDER / SEE ENTRY ABOVE

 [Document Available \(#1023603217\)](#)

Report Generated by The Oklahoma Court Information System at December 11, 2013 15:29 PM

End of Transmission.

EXHIBIT 2



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED
1000.0010

DEAN M. AULERICH,

Plaintiff,

v.

BLUECROSS BLUESHIELD OF
OKLAHOMA,

Defendant.

NOV 07 2013

CJ-2013-05124
CASE NO.

Attorney Lien Claimed

JEFFERSON D. SELLERS

PETITION

COMES NOW the Plaintiff, Dean M. Aulerich, and for his cause of action against the Defendant, BlueCross BlueShield of Oklahoma, would show this Honorable Court the following:

1. Plaintiff purchased health insurance coverage through the Defendant, BlueCross BlueShield of Oklahoma ("BlueCross"). The insurer provided the insurance and accepted the premiums paid for the coverage.

2. Plaintiff needed a medically required surgical procedure and notified the health insurer of the necessity for the surgery. Initially, BlueCross approved the procedure, agreed the surgery was medically necessary, and sent correspondence authorizing the operation. The surgery was scheduled. Shortly thereafter, BlueCross reversed its position and advised the Plaintiff that it would not pay for the surgery, suggesting it was not medically necessary.

3. BlueCross refused to listen to the Plaintiff who explained why the surgery was needed. Further, BlueCross ignored treating physicians who advised the medical condition dictated the medical need for the surgery.

4. Plaintiff requested a copy of the insurance policy, hoping to convince the insurer to make payment by directing the representatives at BlueCross to the relevant provisions of the

EXHIBIT 2

2013-7 PM 1:42

contract. He was given the runaround and after several attempts was unable to obtain a copy of the insurance policy. Instead, BlueCross provided a copy of a summary of benefits. The summary clearly states the details of the insurance are set forth in the contract and its language governs over the content of the benefits summary.

5. Plaintiff made several unsuccessful attempts to try to convince BlueCross to be reasonable and approve payment. BlueCross refused. The surgery was ultimately rescheduled and completed at Plaintiff's expense.

6. The insurance company failed to conduct an appropriate investigation and evaluation of the claim and wrongfully refused payment of the same. If BlueCross had properly investigated and evaluated Plaintiff's claim for medical benefits, it would have determined, as Plaintiff attempted to explain to BlueCross, that he faced a medical condition requiring the surgery.

7. BlueCross demonstrated a callous disregard for Plaintiff's condition and ignored the economic needs for payment of the medical expenses. BlueCross's actions were conducted in bad faith and violated the implied duty of good faith and fair dealing it owed to the Plaintiff under Oklahoma law.

8. As a result of the breach of the implied duty of good faith and fair dealing, Plaintiff suffered damages including, but not limited to, the wrongful denial of medical benefits that were due, mental pain and suffering, embarrassment, loss of reputation, financial losses, and required the policyholder to retain legal counsel to bring this action. But for the bad faith actions of BlueCross, Plaintiff would not have been required to retain the services of an attorney or file this lawsuit.

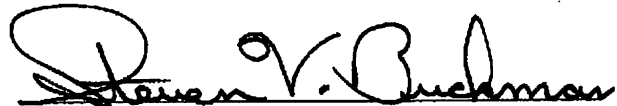
9. Plaintiff asserts the actions of BlueCross were egregious, deliberate, intentional, and willful. Alternatively, even if the facts are viewed in a light most favorable to BlueCross, the actions

were grossly reckless and in utter disregard of the obligations imposed by Oklahoma law. Therefore, Plaintiff further seeks exemplary damages to deter BlueCross from the same or similar conduct in the future and as a means of protecting the benefit and welfare of the Oklahoma public.

WHEREFORE, Plaintiff, Dean M. Aulerich, prays for judgment against the Defendant, BlueCross BlueShield of Oklahoma, for a sum in excess of \$75,000.00 for actual damages, exemplary damages, costs, prejudgment interest at the maximum statutory rate allowed, post-judgment interest at the maximum statutory rate allowed, attorney fees, and any and all other just and equitable relief this Honorable Court deems proper.

BUCKMAN & GRAY,
A Professional Corporation

By:



Steven V. Buckman, OBA# 10745

525 South Main, Suite 660

Tulsa, Oklahoma 74103

Telephone: (918) 587-1525

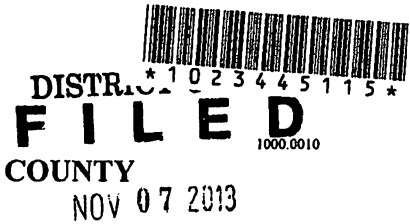
Facsimile: (918) 587-1535

Attorney for Plaintiff, Dean M. Aulerich

Attorney Lien Claimed

EXHIBIT 3

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA



DEAN M. AULERICH,

Plaintiff,

v.

BLUECROSS BLUESHIELD OF
OKLAHOMA,

Defendant.

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLAHOMA - TULSA COUNTY

CJ-2013 05124
JEFFERSON D. SELLERS

ENTRY OF APPEARANCE

COMES NOW Steven V. Buckman of Buckman & Gray, A Professional Corporation and enters an appearance on behalf of Plaintiff Dean M. Aulerich in the above-styled case.

BUCKMAN & GRAY,
A Professional Corporation

By:

A handwritten signature of Steven V. Buckman in black ink.

Steven V. Buckman, OBA #10745
525 South Main, Suite 660
Tulsa, Oklahoma 74103
sbuckman@buckmangray.com
Telephone: (918) 587-1525
Facsimile: (918) 587-1535
Attorney for Plaintiff, Dean M. Aulerich

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2013, a true and correct copy of the above and foregoing Entry Of Appearance was mailed by certified mail, with correct postage fully prepaid thereon, to the following:

Oklahoma Insurance Commissioner
Attn: Maria Torres
3625 Northwest 56th Street, Suite 100
Oklahoma City, Oklahoma 73112

A handwritten signature of Steven V. Buckman in black ink.

Steven V. Buckman



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DEAN M AULERICH,

2013 DEC -3 PM 3: 58

Plaintiff,

v.

BLUECROSS BLUESHIELD OF OKLAHOMA

Defendant.

Case No. CJ-2013-05124

Judge Jefferson D. Sellers

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE ANSWER

Defendant, Health Care Service Corporation d/b/a BlueCross BlueShield of Oklahoma ("Defendant"), hereby moves for an extension of 14 days, or until December 18, 2013, in which to respond to the Petition. Counsel for Defendant has conferred with counsel for Plaintiff, and Plaintiff does not oppose this motion. This motion is made in good faith, and not for purposes of delay. Defendant has not made a previous request for an extension of time. A proposed Order is submitted herewith.

Erin K. Dailey, OBA No. 20189

GABLEGOTWALS

1100 ONEOK Plaza

100 West Fifth Street

Tulsa, Oklahoma 74103-4217

(918) 595-4800

(918) 595-4990 (fax)

*Attorney for Defendant,
Health Care Service Corporation d/b/a
BlueCross BlueShield of Oklahoma*

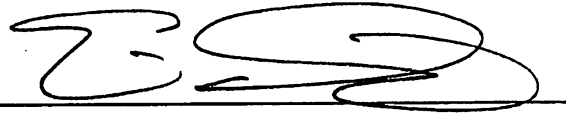
{1202936;}

EXHIBIT 3

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December, 2013, a copy of the above and foregoing document was mailed, postage prepaid, to the following counsel of record:

Steven V. Buckman
525 South Main, Suite 660
Tulsa, OK 74103

A handwritten signature in black ink, appearing to read 'ESD', written over a horizontal line.

Erin K. Dailey



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

DEC - 4 2013

DEAN M AULERICH,

Plaintiff,

v.

BLUECROSS BLUESHIELD OF OKLAHOMA

Defendant.

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No. CJ-2013-05124

Judge Jefferson D. Sellers

ORDER

Now before the Court is Defendant's Unopposed Motion for Extension of Time to File Answer. For good cause shown, Defendant's motion is hereby GRANTED. Defendant is hereby granted an extension of fourteen (14) days, or until December 18, 2013, in which to file its answer in this matter.

IT IS SO ORDERED this 4th day of December, 2013.


The Hon. Jefferson D. Sellers
District Judge

Submitted by:

Erin K. Dailey
GableGotwals
1100 ONEOK Plaza
100 West 5th Street
Tulsa, OK 74103-4217
(918) 595-4800
(918) 595-4990 (fax)

Attorneys for Defendant,



CORPORATION SERVICE COMPANY

CHS / ALL

Transmittal Number: 11842068

Date Processed: 11/15/2013

Notice of Service of Process

Primary Contact: Yolanda Cardenas
Health Care Service Corporation, A Mutual Legal Reserve Company
300 E. Randolph Street
Chicago, IL 60601

Copy of transmittal only provided to: Deborah Jones
Sandra York

Entity:	Health Care Service Corporation, A Mutual Legal Reserve Company Entity ID Number 2256784
Entity Served:	Health Care Service Corporation
Title of Action:	Dean M. Aulerich vs. Bluecross Blueshield of Oklahoma
Document(s) Type:	Summons/Complaint
Nature of Action:	Contract
Court/Agency:	Tulsa County District Court, Oklahoma
Case/Reference No:	CJ-2013-05124
Jurisdiction Served:	Oklahoma
Date Served on CSC:	11/14/2013
Answer or Appearance Due:	20 Days
Originally Served On:	OK Insurance Commissioner on 11/13/2013
How Served:	Certified Mail
Sender Information:	Steven V. Buckman 918-587-1525

Notes: Please note that the Department of Insurance letter was served on Health Care Service Corporation, the summons shows Bluecross Blueshield of Oklahoma.

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

CSC is SAS70 Type II certified for its Litigation Management System.

2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

GOVERNOR
MARY FALLIN

INSURANCE COMMISSIONER
JOHN D. DOAK



INSURANCE COMMISSIONER
State of Oklahoma

November 13, 2013

HEALTH CARE SERVICE CORPORATION,
A MUTUAL LEGAL RESERVE COMPANY
300 E. RANDOLPH
CHICAGO IL 60601

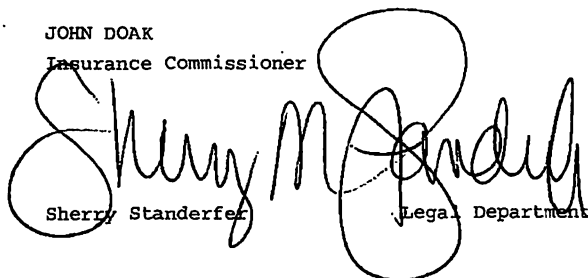
RE: CJ1305124
In the District Court in TULSA
State of Oklahoma
DEAN M. AULERICH
vs
HEALTH CARE SERVICE CORPORATION,
A MUTUAL LEGAL RESERVE COMPANY

Dear Sir or Madam:

Enclosed is a copy of the above captioned summons
served on the Insurance Commissioner as designated agent
for service of process of foreign insurance companies doing
business in the State of Oklahoma (36 O.S. section 621(B)).

Sincerely,

JOHN DOAK
Insurance Commissioner


Sherry Standerfer Legal Department

dp/enclosure

CORPORATION SERVICE COMPANY
115 S.W. 89TH STREET
OKLAHOMA CITY OK 73139

0203

ORIGINAL SUMMONS

RECEIVED
OKLAHOMA INSURANCE DEPARTMENT

IN THE DISTRICT COURT OF TULSA COUNTY
500 SOUTH DENVER AVENUE, STATE OF OKLAHOMA 74103

NOV 13 2013

Legal Division

DEAN M. AULERICH,

Plaintiff,

v.

BLUECROSS BLUESHIELD OF
OKLAHOMA,

Defendant.

)

) Steven V. Buckman, OBA #10745

) 525 South Main, Suite 660

) Tulsa, Oklahoma 74103

)

) Counsel for Dean M. Aulerich

CA-2013 05124

) CASE NO. _____

)

)

To the above-named Defendant:

BLUECROSS BLUESHIELD OF OKLAHOMA

c/o The Oklahoma Insurance Commissioner

ATTN: Maria Torres

5 Corporate Plaza

3625 Northwest 56th Street, Suite 100

Oklahoma City, Oklahoma 73112

You have been sued by the above named Plaintiff and you are directed to file a written Answer to the attached Petition in the court at the above address within twenty (20) days after service of this Summons upon you, exclusive of the day of service. Within the same time, a copy of your Answer must be delivered or mailed to the attorney for the Plaintiff. Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

Issued this 7 day of November, 2013.

SALLY HOWE SMITH, COURT CLERK

(SEAL)

By: _____

Deputy

This summons and order was served on _____

**YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY
MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER.
SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO
THAT AN ANSWER MAY BE FILED WITHIN THE TIME
LIMIT STATED IN THIS SUMMONS.**

DISTRICT COURT
FILED

NOV 07 2013

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA: TULSA COUNTY

DEAN M. AULERICH,

Plaintiff,

v.

BLUECROSS BLUESHIELD OF
OKLAHOMA,

Defendant.

CJ-2013 05124
CASE NO.

Attorney Lien Claimed

JEFFERSON D. SELLERS

PETITION

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contract. He was given the runaround and after several attempts was unable to obtain a copy of the insurance policy. Instead, BlueCross provided a copy of a summary of benefits. The summary clearly states the details of the insurance are set forth in the contract and its language governs over the content of the benefits summary.

5. Plaintiff made several unsuccessful attempts to try to convince BlueCross to be reasonable and approve payment. BlueCross refused. The surgery was ultimately rescheduled and completed at Plaintiff's expense.

6. The insurance company failed to conduct an appropriate investigation and evaluation of the claim and wrongfully refused payment of the same. If BlueCross had properly investigated and evaluated Plaintiff's claim for medical benefits, it would have determined, as Plaintiff attempted to explain to BlueCross, that he faced a medical condition requiring the surgery.

7. BlueCross demonstrated a callous disregard for Plaintiff's condition and ignored the economic needs for payment of the medical expenses. BlueCross's actions were conducted in bad faith and violated the implied duty of good faith and fair dealing it owed to the Plaintiff under Oklahoma law.

8. As a result of the breach of the implied duty of good faith and fair dealing, Plaintiff suffered damages including, but not limited to, the wrongful denial of medical benefits that were due, mental pain and suffering, embarrassment, loss of reputation, financial losses, and required the policyholder to retain legal counsel to bring this action. But for the bad faith actions of BlueCross, Plaintiff would not have been required to retain the services of an attorney or file this lawsuit.

9. Plaintiff asserts the actions of BlueCross were egregious, deliberate, intentional, and willful. Alternatively, even if the facts are viewed in a light most favorable to BlueCross, the actions

were grossly reckless and in utter disregard of the obligations imposed by Oklahoma law. Therefore, Plaintiff further seeks exemplary damages to deter BlueCross from the same or similar conduct in the future and as a means of protecting the benefit and welfare of the Oklahoma public.

WHEREFORE, Plaintiff, Dean M. Aulerich, prays for judgment against the Defendant, BlueCross BlueShield of Oklahoma, for a sum in excess of \$75,000.00 for actual damages, exemplary damages, costs, prejudgment interest at the maximum statutory rate allowed, post-judgment interest at the maximum statutory rate allowed, attorney fees, and any and all other just and equitable relief this Honorable Court deems proper.

BUCKMAN & GRAY,
A Professional Corporation

By:



Steven V. Buckman, OBA# 10745

525 South Main, Suite 660

Tulsa, Oklahoma 74103

Telephone: (918) 587-1525

Facsimile: (918) 587-1535

Attorney for Plaintiff, Dean M. Aulerich

Attorney Lien Claimed

**DISTRICT COURT
FILED**

1000.0010

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY NOV 07 2013
STATE OF OKLAHOMA**

DEAN M. AULERICH,

Plaintiff,

v.

**BLUECROSS BLUESHIELD OF
OKLAHOMA,**

Defendant.

**SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY**

CJ-2013 05124

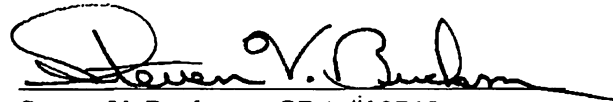
JEFFERSON D. SELLERS

ENTRY OF APPEARANCE

COMES NOW Steven V. Buckman of Buckman & Gray, *A Professional Corporation* and
enters an appearance on behalf of Plaintiff Dean M. Aulerich in the above-styled case.

**BUCKMAN & GRAY,
*A Professional Corporation***

By:



Steven V. Buckman, OBA #10745

525 South Main, Suite 660

Tulsa, Oklahoma 74103

sbuckman@buckmangray.com

Telephone: (918) 587-1525

Facsimile: (918) 587-1535

Attorney for Plaintiff, Dean M. Aulerich

CERTIFICATE OF SERVICE

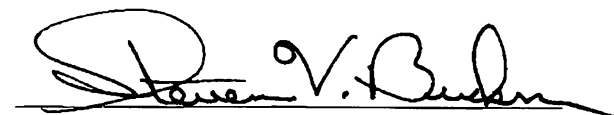
I hereby certify that on this 7th day of November, 2013, a true and correct copy of the
above and foregoing Entry Of Appearance was mailed by certified mail, with correct postage fully
prepaid thereon, to the following:

Oklahoma Insurance Commissioner

Attn: Maria Torres

3625 Northwest 56th Street, Suite 100

Oklahoma City, Oklahoma 73112



Steven V. Buckman

1000.0010

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DEAN M. AULERICH,

Plaintiff,

v.

BLUECROSS BLUESHIELD OF
OKLAHOMA,

Defendant.

CASE NO. *CJ-2013-5124*

PLAINTIFF'S INTERROGATORIES TO DEFENDANT

TO: BLUECROSS BLUESHIELD OF OKLAHOMA
c/o The Oklahoma Insurance Commissioner
ATTN: **Maria Torres**
5 Corporate Plaza
3625 Northwest 56th Street, Suite 100
Oklahoma City, Oklahoma 73112

The Defendant, BlueCross BlueShield of Oklahoma ("BlueCross" or "Defendant"), is directed to separately answer, in writing, under oath, each of the following Interrogatories in accordance with the Oklahoma Discovery Code pursuant to the request of this Plaintiff.

A. "You" or "your" shall refer to the named Defendant answering these Interrogatories.

B. "Writing" shall refer to any written material, whether typed, handwritten, printed or otherwise, or any photograph, photostat, microfilm or any other reproduction thereof, and including, without limitation, each note, memorandum, letter, telegram, circular, release, article, report, analysis, chart, account, book, draft, summary, diary, transcript, agreement, contract deposit slip, bank statement, receipt, stock certificate, bond coupon, purchase and/or sale confirmation, monthly securities and/or commodities statements.

C. "Person" shall refer to any natural person, firm, association, partnership, corporation

or other form of legal business entity.

D. "Identify" or "identification", when used with reference to an individual person, means to state his full name, residential address and his present or last known position and business affiliation.

E. "Identify" or "identification", when used in reference to a corporation, firm or other entity, means its full name, form of organization, and its present or last known address.

F. "Identify" or "identification", when used in reference to a writing, means a description of that writing in a manner sufficient for a subpoena duces tecum or for production pursuant to Section 3233 of the Oklahoma Discovery Code. Also, give its present location or custodian. If any such writing was, but no longer is, in your possession or control, state what disposition was made of it, the date thereof, the person responsible for making the decision as to such disposition, and the person responsible for carrying out such disposition.

G. "Identify" or "identification", when used in reference to a meeting or conference, means to state the date of the meeting or conference, the place of the meeting or conference, the full name and the present or last known position, business affiliation and residential address of each person attending the meeting or conference.

H. "Identify" or "identification", when used in reference to an oral conversation other than telephonic conversation, means to state when such conversation took place, where such conversation took place, and the full name and present or last known position and business affiliation and residential address of each party to such conversation.

INSTRUCTIONS

1. These Interrogatories shall be deemed continuing pursuant to Section 3226(E) of the

Oklahoma Discovery Code as to require additional answers if Defendant acquires additional information between the time the answers are served and the time of trial. Such additional answers shall be served seasonably, but not later than thirty (30) days after such further information is received. Information requested is to include all information in the possession of the parties, their attorneys, insurance investigators, and agents.

2. Each Interrogatory is to be considered as having been asked individually of Defendant and Defendant shall file separate answers, first giving the question, followed by the answering party's response.

3. Whenever used herein, the singular shall be deemed to include the plural, the feminine shall be deemed to include the masculine, the disjunctive ("or"), shall be deemed to include the conjunctive ("and"), and the conjunctive ("and") shall be deemed to include the disjunctive ("or"), and each of the functional words, "each", "every", "any", and "all" shall be deemed to include each of the other functional words.

4. Interrogatories which cannot be answered in full shall be answered as completely as possible, and incomplete answers shall be accompanied by a specification of the reasons for the incompleteness of the answer, as well as by a statement of whatever knowledge, information or belief you possess with respect to each unanswered or incompletely answered Interrogatory.

INTERROGATORIES

INTERROGATORY NO. 1: State the names, addresses, and telephone numbers of all witnesses and expert witnesses to be utilized by Defendant at trial.

INTERROGATORY NO. 2: Why did you deny the claim for the surgery submitted by Dean Aulerich?

INTERROGATORY NO. 3: Who at BlueCross made the decision to deny the claim?

Please identify the ranking supervisors over the decision maker by name and title up to and including the president of the company at the time period the decision was made.

INTERROGATORY NO. 4: Please produce a list of names, addresses, job titles and job descriptions of the person or persons with knowledge of the training on the duty of good faith and fair dealing for the adjustment of claims as presented by Oklahoma insureds during the time period of January 1, 2013, to the present.

INTERROGATORY NO. 5: For the time period of January 1, 2013, to the present for Oklahoma claims, please identify all e-mail and/or internal messaging systems in use, including but not limited to the following:

- a. All e-mail and/or internal messaging software and versions presently and previously used by you and the dates of use;
- b. All hardware that has been used or is currently in use as a server for the e-mail and/or internal messaging system including its name;
- c. The specific type of hardware that was used as terminals into the e-mail and/or internal messaging system (including home PCs, laptops, desktops, cellular telephones, personal digital assistants, etc.) and its current location;
- d. The number of users there has been on each e-mail and/or internal messaging system (delineate between past and current users);
- e. Whether the e-mail and/or internal messaging is encrypted in any way and list passwords for all users;
- f. All users known to you who have generated e-mail and/or internal messaging related to the subject matter of this litigation; and
- g. All e-mail and/or internal messaging known to you (including creation date, recipient(s) and sender(s)) that relate to, reference or are relevant to the subject matter of this litigation.

INTERROGATORY NO. 6: Identify and attach any and all versions of document/data retention or destruction policies used by BlueCross and identify documents or classes of documents that were subject to scheduled destruction during the relevant period(s) of time involving Plaintiff's claim:

- a. Attach copies of document destruction inventories/logs/schedules containing documents relevant to this action;
- b. Attach a copy of any disaster recovery plan relevant to this action in which data might exist;
- c. Also state:
 - 1) The date the policy was implemented;
 - 2) The date, if any, of the suspension of this policy *in toto* or any aspect of said policy in response to this litigation;
 - 3) A description by topic, creation date, user or bytes of any and all data that has been deleted or in any way destroyed after the commencement of this litigation. State whether the deletion or destruction of any data pursuant to said data retention policy occurred through automation or by user action; and
 - 4) Whether any company-wide instruction regarding the suspension of the data retention/destruction policy occurred after or related to the commencement of this litigation. If so, identify the individual responsible for enforcing the suspension.

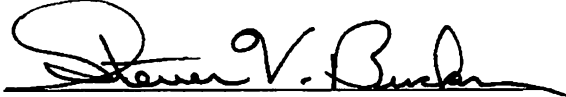
INTERROGATORY NO. 7: Identify any data related to Plaintiff's claim at issue in this lawsuit that has been deleted, physically destroyed, discarded, damaged, or overwritten, whether pursuant to a document retention or destruction policy or otherwise, since the commencement of this litigation. Specifically identify those documents that relate to or reference the subject matter of the above-referenced litigation.

INTERROGATORY NO. 8: List the job title, description, business address, telephone number, and e-mail address of any individuals that are/were responsible for creating, implementing or retaining any and all versions of your document retention or destruction policies.

INTERROGATORY NO. 9: Please state the date that you first anticipated litigation.

**BUCKMAN & GRAY,
A Professional Corporation**

By:

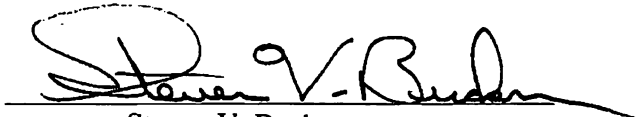


Steven V. Buckman, OBA #10745
525 South Main, Suite 660
Tulsa, Oklahoma 74103
sbuckman@buckmangray.com
Telephone: (918) 587-1525
Facsimile: (918) 587-1535
Attorney for Plaintiff, Dean M. Aulerich

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2013, a true and correct copy of the above and foregoing Plaintiff's Interrogatories To Defendant was mailed by certified mail, with correct postage fully prepaid thereon, to the following:

Oklahoma Insurance Commissioner
Attn: Maria Torres
3625 Northwest 56th Street, Suite 100
Oklahoma City, Oklahoma 73112



Steven V. Buckman

1000.0010

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

DEAN M. AULERICH,

Plaintiff,

v.

**BLUECROSS BLUESHIELD OF
OKLAHOMA,**

Defendant.

CASE NO. CJ-2013-5124

**PLAINTIFF'S REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS FROM DEFENDANT**

TO: BLUECROSS BLUESHIELD OF OKLAHOMA
c/o The Oklahoma Insurance Commissioner
ATTN: Maria Torres
5 Corporate Plaza
3625 Northwest 56th Street, Suite 100
Oklahoma City, Oklahoma 73112

COMES NOW Plaintiff, Dean M. Aulerich, by and through his attorney of record, Buckman & Gray, *A Professional Corporation*, and pursuant to the provisions of 12 O.S. § 3234, requests that Defendant, BlueCross BlueShield of Oklahoma ("BlueCross" or "Defendant"), produce for inspection and copying the following documents and things. Said documents and things shall be produced for inspection and copying at the offices of Buckman & Gray, *A Professional Corporation*, 525 South Main Street, Suite 660, Tulsa, Oklahoma, between the hours of 8:30 a.m. and 5:00 p.m., within thirty (30) days following receipt of this request. Said documents and things shall be produced in the order as described below and those documents and things produced pursuant to each request shall be delineated as defined thereby. If the document(s) meeting each document request should exceed one hundred (100) in number, Defendant shall, prior to the date for demand of production of documents and things, supply an inventory describing in particularity each such

document, and Plaintiff will elect upon said inventory of such documents provided which shall, in fact, be produced. In the event that no such inventory is provided by Defendant, all documents described by said request shall be provided at the time above referenced and specified. This request is intended to assert certain information and requires Defendant to make a complete and diligent search of all records and evidence at the disposal or in the possession of itself, its agents, insurance company representatives, investigators, servants, employees, attorneys, and accountants and those that are contained in the records or other materials in Defendant's custody, control or that are available to you or them.

This request shall be continuing, and should the documents available or discovered pursuant to said request change before trial of this action, you are requested to advise this Plaintiff's counsel of the additional documents which are discovered and copies of said documents shall be produced to Plaintiff's counsel.

DOCUMENTS AND THINGS REQUESTED

REQUEST NUMBER 1: Produce a copy of any supervisor, manager, unit, regional, agent, consultant, or zone file maintained by BlueCross regarding Plaintiff's claim for surgery your company denied.

REQUEST NUMBER 2: Provide copies of all manuals, handbooks, training manuals or guidelines, correspondence, memoranda and opinions in your possession or control prior to the filing of this lawsuit, which contain, reflect or describe any claim-handling policies, procedures and/or practices which you believe are authoritative and/or a standard in the insurance industry for the adjustment of first party medical claims in the State of Oklahoma.

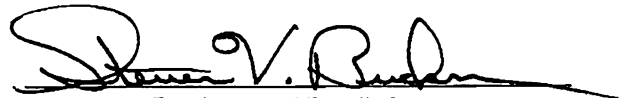
REQUEST NUMBER 3: Please provide copies of all files, records, and documents,

electronic, digital, or otherwise, involving the medical claim for surgery at issue in this lawsuit. This request includes, but is not limited to, correspondence, memos, logs, diaries, notes, files, e-mails, faxes, summaries, internal messages, or documents.

REQUEST NUMBER 4: Produce a complete copy of the insurance policy.

**BUCKMAN & GRAY,
A Professional Corporation**

By:

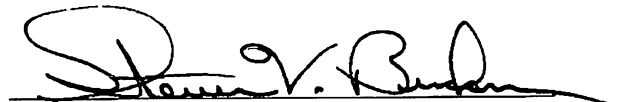


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Tulsa, Oklahoma 74103
sbuckman@buckmangray.com
Telephone: (918) 587-1525
Facsimile: (918) 587-1535
Attorney for Plaintiff, Dean M. Aulerich

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2013, a true and correct copy of the above and foregoing Plaintiff's Request For Production Of Documents And Things From Defendant was mailed by certified mail, with correct postage fully prepaid thereon, to the following:

Oklahoma Insurance Commissioner
Attn: Maria Torres
3625 Northwest 56th Street, Suite 100
Oklahoma City, Oklahoma 73112



Steven V. Buckman

John D. Doak

Insurance Commissioner
Oklahoma Insurance Department
5 Corporate Plaza
3625 N.W. 56th St., Ste. #100
Oklahoma City, OK 73112-4511



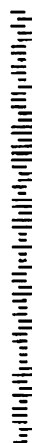
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FILED IN OKLAHOMA

2013 DEC 11

2/11/2013

0011220913



Corproation Service Company
115 S.W. 89th Street
OKC, OK 73139

EXHIBIT 4



Erin K. Dailey
918.595.4863
edailey@gablelaw.com

December 2, 2013

Steven Buckman, Esq.
Buckman & Gray,
A Professional Corporation
Park Centre, Suite 660
525 South Main Street
Tulsa, Oklahoma
74103-4521
(918) 587-1535 facsimile

Re: *Dean M. Aulerich v. BlueCross BlueShield of Oklahoma*, Tulsa County Case No.
CJ-2013-05124

Dear Steve:

This letter memorializes our discussion and the agreements we reached today regarding the above-captioned matter. As we discussed, Plaintiff agrees to stipulate that he is a citizen of Oklahoma and resident of Tulsa County for diversity of citizenship purposes. We also agreed that the amount in controversy has been met by virtue of the plea in the Petition. In addition, you have agreed to provide my client with a two-week extension of time to answer the Petition, or until December 18, 2013.

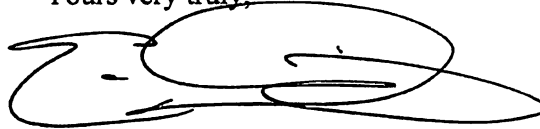
Please notify me in writing as soon as practicable if you disagree with any of the above.

Regarding the citizenship of the defendant for diversity purposes, as we discussed, Blue Cross and Blue Shield of Oklahoma ("BCBS-OK") is an unincorporated division of Health Care Service Corporation. HCSC is a mutual legal reserve company that is incorporated under the laws of Illinois with its principal place of business in Chicago, Illinois. "[F]or diversity purposes, [an] unincorporated division's citizenship is [the] same as corporation of which it is a part" *Equifax Services, Inc. v. Hitz*, 905 F.2d 1355, 1358 n.2 (10th Cir. 1990) (citing *Brunswick Corp. v. Jones*, 784 F.2d 271, 275 n. 3 (7th Cir.1986)). Accordingly, BCBS-OK is a citizen of Illinois for diversity purposes.

Steve Buckman
December 2, 2013
Page 2

Thank you for your professional courtesy in this matter, and feel free to call me at 918-595-4863 if you would like to discuss this matter further.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Erin K. Dailey', with a large, stylized loop at the end.

Erin K. Dailey
For the Firm

EKD:skb

EXHIBIT 5

DECLARATION OF LESLIE ADKINS
IN SUPPORT OF NOTICE OF REMOVAL

I, the undersigned, upon personal knowledge, declare as follows:

1. I am over 21 years of age and am competent to testify to the matters stated herein. I have personal knowledge of the following facts and could testify thereto if called as a witness.

2. I am Vice President Service Delivery and Operations, at Health Care Service Corporation ("HCSC"). Among other duties in my role at HCSC, I have oversight responsibilities for HCSC's Tulsa, Oklahoma Full Service Unit, which processes health insurance claims and fields member inquiries.

3. Defendant HCSC is an Illinois mutual legal reserve company that is incorporated under the laws of Illinois. HCSC has its headquarters and principal place of business at 300 East Randolph Street, Chicago, Illinois. HCSC's officers direct, control, and coordinate HCSC's corporate activities from this location.

4. Defendant Blue Cross and Blue Shield of Oklahoma ("BCBS-OK") is an unincorporated division of HCSC. Through BCBS-OK, HCSC underwrites risk and administers health benefit plans in Oklahoma.

5. Based on my work with the legal department in preparing this declaration, I have learned that HCSC was first served with a copy of the Petition for *Dean M. Aulerich v. BlueCross BlueShield of Oklahoma*, Case No. CJ-2013-05124, District Court of Tulsa County, State of Oklahoma, through service on the Insurance Commissioner on November 13, 2013.

I declare under penalty of perjury that the foregoing is true and correct. Executed
on December 11th, 2013, in Wichita Falls, Texas.

Signature: Leslie Adkins

Name: Leslie Adkins

Title: Vice President